

Elliott, 1 H. & J. 1; *Collins v. Nicols*, 1 H. & J. 400; *Cheney v. Watkins*, 1 H. & J. 533; *Massey v. Massey*, 4 H. & J. 142; *Darby v. Mayer*, 10 Wheat. 465. (Since affirmed by 1831, ch. 315, s. 1—passed 14th March, 1832.) It would, therefore, seem clearly to follow, that here, as in England, if it became necessary to establish a will of real estate, that, on application, this Court would lend its aid, and order the register, if the original will were then in his keeping, to deliver it to the applicant, on his giving bond for its safe return, for the purpose of having its validity investigated and determined upon in due course of law; or, considering the original will as being a part of the public records of the State, relief might be had by a special legislative enactment. (d)

* From this brief review of the law in relation to wills, it is evident, that none of those cases relied on, which shew, **482** that the Court of Chancery has undertaken to have the original will itself taken from the custody of the register and delivered out to a party, or brought before the Court for the purpose of investigation and proof, can have any material bearing upon the matter now under consideration.

It may not, however, be amiss to observe, that, in relation to the probate and custody of wills, our law appears to stand as much in need of amendment as that of England. "I have often thought it a very great absurdity," says Chancellor Hardwicke, "that a will which consists both of real and personal estate, notwithstanding it has been set aside at law for the insanity of the testator, shall still be litigated upon paper depositions only in the Ecclesiastical Court, because they have a jurisdiction on account of the personal estate disposed of by it. I wish gentlemen of abilities would take this inconvenience and absurdity into their consideration, and find out a proper remedy by the assistance of the Legislature. But, as the law stands at present, it is not in the power of this Court to interpose, so as to stop the proceedings in the Ecclesiastical Court." *Montgomery v. Clark*, 2 Atk. 378. The original will itself should in all cases, be committed entirely to the safe custody of the register of wills, as a part of the documents of his office, for which he should be expressly held responsible; since as an original it can only have authenticity from its being

(d) The register of wills of Baltimore was authorized by a special Act of Assembly, to deliver the original will of Robert Burney, deceased, to his heirs, to enable them to establish their title, as such, to lands in Ireland, of which he had died seised in fee simple.—1807, ch. 12. By a similar Act the register of wills of Worcester, was authorized to deliver the original will of Joseph Delastatus, deceased, for the purpose of having it recorded in Accomack County, Virginia.—1808, ch. 89. And by a special Act the register of wills of Charles County was directed to transmit the original will of Daniel of St. Thomas Jenifer, to the Court of Appeals, to be there used in a case then depending, and then to be returned.—1822, ch. 117.